

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE CITY OF NEW YORK and THE PEOPLE
OF THE STATE OF NEW YORK,

Plaintiffs,

v.

FEDEX GROUND PACKAGE SYSTEM, INC.,

Defendant.

**DEFENDANT’S PROPOSED
EXPLANATION OF THE CASE AND
VOIR DIRE QUESTIONS**

13-cv-9173-ER

**PROPOSED EXPLANATION OF THE CASE AND *VOIR DIRE* QUESTIONS OF
DEFENDANT FEDEX GROUND PACKAGE SYSTEM, INC.**

Pursuant to this Court’s Individual Rules of Practice and the pre-trial scheduling order (ECF 524), Defendant FedEx Ground Package System, Inc. (“FedEx Ground”) hereby submits the following proposed brief explanation of the case and proposed *voir dire* questions for the Court’s consideration. Consistent with the Court’s Individual Rules of Practice, the parties have met and conferred in an attempt to reach agreement on a paragraph for the Court to use in *voir dire* to provide the jury panel with a brief explanation of the case. Despite good faith efforts, an agreement could not be reached, and FedEx Ground accordingly sets forth its proposed paragraph below. In addition, FedEx Ground requests the Court to question prospective jurors concerning the subject matter of the submitted questions below, together with any appropriate follow-up questions which may be necessitated by the answers to the *voir dire* questions.

Defendant's Proposed Explanation of the Case

The plaintiffs in this case are the State of New York and the City of New York and the defendant is FedEx Ground Package System, Inc. The State of New York claims that FedEx Ground violated state law and an agreement entered into by the State of New York and FedEx Ground, called the "Assurance of Compliance," that prohibits FedEx Ground from knowingly shipping cigarettes to New York consumers. Additionally, both the City of New York and the State of New York claim that FedEx Ground violated a federal law prohibiting the knowing shipment of untaxed cigarettes into New York and another federal law prohibiting racketeering activity. The plaintiffs claim that they are entitled to damages and stipulated penalties as a result. FedEx Ground denies these allegations and contends that it did not knowingly ship cigarettes to New York consumers, did not knowingly ship untaxed cigarettes into New York, and did not engage in racketeering activity, and complied with all applicable laws and the Assurance of Compliance. FedEx Ground further contends that it did not cause injury to the plaintiffs.

Defendant's Proposed *Voir Dire* Questions For Potential Jurors

PART I:

1. Do you have any personal knowledge of this lawsuit?
2. Have you seen or read any media coverage of the case, whether from television, radio, newspapers, or the internet? If yes, what source and what did the media say about the case? Would the knowledge you acquired from these sources affect your ability to render a fair and impartial verdict?
3. I will now introduce you to the lawyers in this case. If you know any of the attorneys I am about to name, please so indicate by raising your hand.

The State of New York and City of New York are represented by the following individuals from the New York Attorney General's Office and the New York City Law Department:

- Leslieann Cachola
- Brant Campbell

- Krista Friedrich
- Samantha Liskow
- Hope Lu
- Eric Proshansky
- Josh Rubin
- Manisha Sheth
- Paulina Stamatelos

FedEx Ground is represented by the following individuals from the law firm of Wilkinson Walsh + Eskovitz:

- Jeremy Barber
- Brian Stekloff
- Beth Wilkinson

4. I am now going to read a list of people who may be called as witnesses in the case. Please listen carefully to the list of names and raise your hand if you are acquainted with any of these people.

- Mary Adkins
- Sonia Angell
- Dana Biberman
- Mark Bitzer
- Robert Boetto
- Jeffrey Bolinger
- Brian Broderick
- Delores Bruner-Uebelhoer
- Mary Burriss
- Joseph Collins
- John Constanza
- Jeffrie Ann Crook (a.k.a. Ann Tagert)
- Mabel Cuffee
- James Dolin
- Scott Drenkard
- Richard Ernst
- Vincent Esposito
- Kim Evans
- Raychel Favaloro
- Patrick Fleenor
- Kevin Fow
- Chris Gallant
- Tracy Gatten
- Lance Gumbs
- Heath Harlem
- Rick Hartt
- Samantha Harrison

- Maureen Kokeas
- Kevin Koken
- Theresa Knight
- Grant Kuhn
- Christopher Lannon
- Jeffrey Lerman
- Michael Ligouri
- Andy Lynn
- John Maddux
- Kristi (“Nikki”) Martin
- Dawn McCarrell
- Michael Moore
- Edward Morawski
- Janet Mullins
- Matthew Myers
- Matthew Myerson
- Carl Nappi
- Christopher Nichols
- David Nocenti
- Peter Persampieri
- Micah Phillips
- Ursula Phillips
- Eric Proshansky
- Virginia Richardson
- Mark Scanlon
- Deborah Schmidt (a.k.a. Deborah Adamson)
- Daniel Skelley
- Jonathan Smith
- Jacqueline Smith Onco
- Anthony Spalvieri
- Peter Spitzer
- Laura Stamm
- Scott Stryer
- Renee Thomas
- Katherine Venturi (a.k.a. Katherine Van Geffen)
- Adare Whitt
- Rebecca Williams

5. Are you currently, or have you ever been, employed by FedEx? If yes, in what capacity?
6. Are you currently, or have you ever been, employed by the New York State government or the New York City government? If yes, which one and in what capacity?

7. To your knowledge, have any of your close friends or relatives ever been employed by FedEx, the New York State government, or the New York City government? If yes, which one and in what capacity?
8. Have you ever worked with, personally known, or financially supported the former New York Attorney General, and now Governor, Andrew Cuomo?
9. Have you ever worked with, personally known, or financially supported the former New York Attorney General Eric Schneiderman?
10. Have you ever had a bad experience when using FedEx? If yes, what was your experience?
11. Do you prefer not to use FedEx when you ship a package?
12. Do you have any negative opinions of FedEx?
13. Do you believe that shipping companies like the United States Postal Service, DHL, UPS, or FedEx always inspect the contents of customers' packages to make sure that the contents comply with the law? If yes, would knowing these companies do not typically inspect the contents of customers' packages make it difficult for you to be a fair and impartial juror?
14. Do you know what contraband cigarettes are?
15. Are you currently a smoker?
16. Have you ever been a smoker?
17. Are any of your close friends or family members smokers?
18. Have you or someone close to you developed a smoking-related illness?
19. Have you ever been a member or supporter of an anti-smoking group?
20. Do you have any medical training?
21. Do you currently work, or have you ever worked, in the medical profession?
22. Do you have any education or work experience in the field of ethics?
23. Have you or someone close to you ever been a plaintiff, a defendant, a complainant, or a witness in a state or federal court case, whether civil or criminal? If yes, what kind of case and in what capacity?
24. I have tried to direct your attention through my questioning to possible reasons why you might not be able to sit as a fair and impartial juror. But only you know whether there is

some other matter that I did not mention that I should have asked about. Do you have any doubt as to your ability to serve conscientiously, fairly, and impartially in this case and to render a true and just verdict, according to the law and the evidence?

PART II:

25. How old are you?
26. What is your city, town, or county of residence?
27. What level of education have you completed?
28. Are you currently employed? If so, are you employed full time or part time?
29. If you are currently employed, what is your current occupation?
30. If you are retired or unemployed, what was your former occupation?
31. Do you own or rent your home?
32. Are you currently married? If not, have you ever been married?
33. If married, what is your spouse's current or most recent occupation?
34. Do you have any children? How old are they? If grown up, what do they do professionally?
35. In the past 10 years, what civic, religious, or community groups, social clubs, organizations, or volunteer efforts have you and your spouse belonged to or supported?
36. Have you or any member of your immediate family ever served in the Armed Forces? If so, which branch and when?
37. Which print publications, including online media, do you regularly read?
38. Which internet websites do you visit on a regular basis?
39. To which radio stations, television shows, or podcasts do you regularly tune in?
40. What are your hobbies or special interests, or what else do you do in your spare time?

Dated: September 10, 2018

Respectfully submitted

WILKINSON WALSH + ESKOVITZ LLP

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